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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 23 1997  
Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Part 1 of the  
Commission's Rules -- Competitive Bidding  
Proceeding;

Comment Requested on 7 Percent Interest Rate  
Imposed on C Block Installment Payment Plan  
Notes; Waivers Requested by Broadband PCS C  
Block Licensees

WT Docket No. 97-82

Public Notice DA 97-1152

### COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS

Pursuant to Public Notices DA 97-679<sup>1</sup> and DA 97-1152<sup>2</sup> released by the Federal Communications Commission ("FCC" or "Commission") on June 2, 1997, Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") submits the following comments addressing the C Block debt restructuring and financing relief proposals submitted by a number of industry participants, including C Block Personal Communications Service ("PCS") licensees (the "Petitioners").

#### I. INTRODUCTION

The Commission should not provide *ad hoc* financing and debt relief to certain C Block licensees or make wholesale modifications to its regulatory treatment of C Block licensees in order to artificially bolster the financial positions of a handful of these

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<sup>1</sup> FCC Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues*, DA No. 97-679 (June 2, 1997) ("Installment Payment Issues Public Notice").

<sup>2</sup> FCC Public Notice, *Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes; Waivers Requested by Broadband PCS C Block Licensees*, DA No. 97-1152 (June 2, 1997).

companies.<sup>3</sup> Moreover, PCS auction winners in all spectrum blocks relied on the rules and policies adopted by the Commission prior to the auctions in developing their bidding strategies and business plans and in pursuing joint ventures or other business alliances and affiliations. To now change the treatment afforded some C Block licensees that did not accurately determine their financial limitations in the bidding process would unfairly discriminate among all PCS licensees, including many C block licensees, and would disserve the public interest.

**II. POST AUCTION MODIFICATION OF THE PCS  
ENTREPRENEUR BLOCK RULES AND POLICIES WOULD  
NOT SERVE THE PUBLIC INTEREST AND WOULD  
DISCRIMINATE UNFAIRLY AMONG PCS COMPETITORS  
THAT RELIED ON EXISTING POLICIES**

Existing PCS licensees and applicants and, indeed, all radio spectrum licensees that acquired their licenses through the competitive bidding process, have based their participation in the wireless industry, their financing and business plans, as well as their auction bidding strategies, on the regulatory structure put in place by the FCC prior to each of its 14 spectrum auctions. Post auction modification or waiver of the Commission's established rules will unfairly discriminate against those licensees, including other C Block licensees, that have made timely license installment payments, or full payments,<sup>4</sup> and those auction participants that dropped out of the auctions when the bidding exceeded their financial capability. The requested changes also adversely affect licensees that have been denied similar relief in the past and, in some instances, whose licenses already have been reaucted.

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<sup>3</sup> The Petitioners, individually and jointly, have made numerous requests specific to their individual circumstances. These requests generally fall into three categories: (1) requests for reduced interest payments on the license financing arrangements; (2) requests for modification of the license installment payment terms and schedule; and (3) requests for wholesale restructuring and/or reduction of the debt owed the U.S. Government for the C Block licenses.

<sup>4</sup> As is required by the Commission's rules, Sprint PCS made full payment of \$2.2 billion following the grant of its A and B Block licenses.

The results of the C Block auction have affected bidders' decisions in subsequent auctions and have caused other wireless competitors to make certain business decisions that they might not otherwise have made if Petitioners' proposals had been in place before the spectrum auctions were conducted. For example, Sprint PCS chose not to affiliate with C Block licensees as a means for filling out its spectrum footprint based upon existing C Block rules and policies. Moreover, granting of the requested relief has implications for wireless competitors other than broadband PCS licensees. In fact, recent reports indicate that several narrowband PCS licensees contemplate asking the Commission to ensure "fair and equitable consideration in loan repayment schedules."<sup>5</sup> This suggests that a change in the Commission's treatment of broadband C Block licensees will create a ripple effect across other segments of the wireless industry.

For each of the 14 auctions conducted to date by the FCC, the bidders presumably participated only after informing themselves about the auctions rules, evaluating the value of the licenses for which they planned to bid, and ensuring that they could meet all of the Commission's legal and technical requirements. The Commission made abundantly clear in its implementing orders that licenses would be conditioned on timely performance of all payment obligations<sup>6</sup> and that potential bidders should "make certain of their qualifications *and financial capabilities before the auction.*"<sup>7</sup> Recognizing the close relationship between bidding activities and financing arrangements for small businesses, the Commission found such requirements necessary to ensure the integrity of the auction and licensing processes. Thus, for example, when the Commission addressed whether to eliminate interest payments

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<sup>5</sup> *FCC Considers More Ways To Grant C-Block PCS Licensees Relief*, Wireless Business and Finance (June 18, 1997) (quoting CONXUS President Bill deKay).

<sup>6</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2391 (1994) ("*Second Report & Order*"); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5593 (1994).

<sup>7</sup> *Second Report and Order* at 2382 (emphasis added).

on broadband entrepreneur PCS licenses during its competitive bidding rulemaking proceedings, it concluded that:

Reducing or eliminating interest payments could result in very high bids, which could reduce competition and promote defaults among entrepreneurs. Such an approach could also encourage speculation instead of legitimate applicants who can attract capital.<sup>8</sup>

The Commission has, rightly, maintained this firm position on enforcement of its auction and financial rules throughout the ongoing auction process.<sup>9</sup> Recognizing the potential adverse effects on the auction process, as well as the inherent unfairness to other spectrum licensees and auction participants, the Commission consistently has denied requests for relief from its rules, despite adverse consequences for the requesting parties.<sup>10</sup> For example, in denying a waiver request by a C Block auction applicant of the Commission's upfront payment deadline, the Wireless Bureau responded:

[G]ranting such a waiver would be unfair to parties who decided not to participate in the auction because of an inability to secure financing by the [ ] deadline. Had these potential applicants thought our deadlines were flexible, they may have continued to seek investors beyond the cut-off date. Grant of [a] waiver would harm the public interest by

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<sup>8</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 460 (1994).

<sup>9</sup> As recently as June 19, 1997, the Commission affirmed an order dismissing National Telecom PCS, Inc.'s application for a C Block license for American Samoa for defaulting on its payment obligations, as well as affirming \$269,103.50 in bid withdrawal penalties. *National Telecom PCS, Inc.*, Memorandum Opinion and Order, FCC No. 97-192 (June 19, 1997).

<sup>10</sup> For example, the Commission has denied applicants the opportunity to participate in auctions and has reaucted licenses upon an entity's failure to meet its payment obligations. See e.g., *Emergency Petition for Waiver of Deadline for Submission of Upfront Payments for Broadband PCS Auction filed by Personal Communications Corporation*, Order, 10 FCC Rcd 2124 (WTB 1995) ("Upfront Waiver Petition") (denied opportunity to participate in auction); *BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 3230 (1997) ("BDPCS Waiver Petition") (default on licenses).

undermining the fairness and integrity of the auction process.<sup>11</sup>

Likewise, the Commission recently affirmed the Wireless Bureau's denial of BDPCS, Inc.'s request for waiver of the downpayment rules citing the need to maintain the integrity of the auction process. The Commission admonished:

We have stated previously that in order to maintain the integrity of the auction process, and to ensure the efficient provision of services to the public, auction participants are held to certain obligations, such as meeting relevant financial deadlines.<sup>12</sup>

The majority of the C Block auction winners bid within their means and have made timely license payments.<sup>13</sup> Despite the Commission's warnings, however, some C Block participants that arguably made financially imprudent bids and/or failed to secure adequate financing now seek relief from the Commission for their resulting financial dilemma. The Commission recently addressed the same issue with respect to an earlier group of auction winners licensed to offer Interactive Video and Data Services ("IVDS"). Numerous IVDS licensees sought relief from the Commission's auction payment rules asserting that adequate financing was unavailable and that other changes in the industry had created a negative business climate for the industry.<sup>14</sup> In denying the licensees request for relief, the Common Carrier Bureau concluded that:

The Commission also cannot be responsible for the private business arrangements that an applicant has made to finance its successful bid. If an applicant is unsure of its financing, it seems that the more appropriate course would be to not bid or

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<sup>11</sup> *Upfront Waiver Petition* at 2124.

<sup>12</sup> *BDPCS Waiver Petition* at 3235.

<sup>13</sup> The Petitioners represent only 16 of the 88 (approximately 19 percent) existing C Block licensees.

<sup>14</sup> *See Requests for Waivers in the First Auction of 594 Interactive Video and Data Service Licenses*, 9 FCC Rcd 6384 (CCB 1994), *aff'd*, *Requests for Waivers in the First Auction of Interactive Video and Data Service Licenses*, 10 FCC Rcd 12153 (1995).

to not bid in excess of the commitments of which it was reasonably certain.<sup>15</sup>

The Commission's consistent position to date has been that relief from its competitive bidding rules and policies is not in the public interest. It is not the Commission's role to serve as the guarantor of its licensees' financial success. In the proceedings surrounding the IVDS proceedings the Commission rightly concluded that "no bidder was forced to bid at the auction, and the government cannot guarantee the financial success of widely differing business plans or prospects."<sup>16</sup> Each auction applicant certified to the Commission, prior to participating in the auctions, that it was financially qualified to acquire PCS licenses and construct and operate PCS systems.<sup>17</sup> Commission sanction of imprudent bidding decisions will encourage speculation in FCC licenses, as well as promote inefficient market entry by entities that ultimately may not survive,<sup>18</sup> and ultimately is unfair to those entities that heeded the Commission's warnings and participated only to the extent of their financial abilities.

The financial dilemma faced by the Petitioners and their efforts to seek financial remedies from the FCC, underscore the FCC's own dilemma as it attempts to serve as both banker and regulator of the PCS industry. The public interest and creditors' interests will inevitably diverge, creating inherent conflict for the FCC. Indeed, Chairman Reed Hundt has recognized the conflicts created by this dual role and has asked Congress to shift the debt collection responsibility to the Treasury Department.<sup>19</sup> Such a transfer would be

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<sup>15</sup> *Id.* at 6385.

<sup>16</sup> *Id.* at 6386. *See also Applications of PZ Entertainment Partnership, L.P.*, 7 FCC Rcd 2696, 2696-97 (1992) ("we cannot be the guarantor of the financial success of our licensees. . . . we believe it is inappropriate to use the potential unprofitability of a station as a basis for waiving compliance with our rules").

<sup>17</sup> *See* 47 C.F.R. § 1.2105(a)(2)(v).

<sup>18</sup> *See Installment Payment Issues Public Notice*, Appendix D at 6-7.

<sup>19</sup> *See* Jube Shiver Jr., *FCC Wants Out of Collection Business for Wireless Licenses; Proposed Transfer of Task to Treasury Department Would End Conflict of Interest*, Los Angeles Times, Business 3D (April 3, 1997) ("it is . . . time to assess whether it is consistent

proper.<sup>20</sup> The Commission cannot satisfy its public interest obligations if it must also be concerned that a given licensing decision, correct as a matter of spectrum management and licensing policy, might result in a licensee defaulting on its monetary obligation to the U.S. government. Moreover, even if such a dual role were proper, the FCC does not possess the necessary expertise or experience to perform the functions of a commercial lender.<sup>21</sup>

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(Footnote continued from previous page)

with our statutory mandate under the 1993 Budget Act to act as both the promoter of wireless competition and as banker to the wireless industry.”).

<sup>20</sup> Moreover, it is unclear whether the Commission has authority in the first instance to act as the lender to the PCS industry. Nothing in its organic statute or the Omnibus Budget Reconciliation Act of 1993, which authorized the use of competitive bidding, specifically provides such authority.

<sup>21</sup> Jeffrey Silva, *The PCS Shakeout Begins: Congress Tries to Manage Auction Programs*, Radio Communications Report at 1 (April 21, 1997) (quoting Chairman Hundt’s statement to Congress that the FCC does not have sufficient financial expertise to maintain the banker role it has been given.).

### III. CONCLUSION

The Commission should not place itself in the untenable position of attempting to bolster artificially the financial stability of C block companies through a regulatory fix. To do so would be unfair to all other PCS licensees, and ultimately, disserves the public interest.

Respectfully submitted,



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June 23, 1997



## **CERTIFICATE OF SERVICE**

I, Kathryn M. Stasko, do hereby certify that the foregoing **COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS** was hand delivered on this 23rd day of June, to the following:

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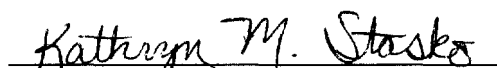
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